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IN THE

Supreme Court of the United States:

OCTOBER TERM, 1960

No. 200

TRAYTON L. LATHROP,
Appellant,

vs.

JOSEPH D. DONOHUE,
Appellee.

BRIEF FOR THE STATE OF WEST VIRGINIA AMICUS CURIAE

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INTEREST OF AMICUS CURIAE

The State of West Virginia has a substantial interest in the outcome of this case. The West Virginia State Bar is and has been a force for good government transcending the professional concerns of bench and bar. The legislative and judicial branches of state government, as well as the public generally, have vital interests at stake.

The West Virginia Legislature (Chapter 44, Acts, 1945, Appendix A to this brief) authorized the Supreme Court of Appeals of West Virginia to promulgate rules (a) defining the practice of law; (b) prescribing codes of ethics governing the practice of law and judicial ethics; (c) prescribing procedures for disciplining attorneys at law; (d) organizing and governing *"an administrative*

agency of the Supreme Court of Appeals of West Virginia" as *"a part of the judicial department of the state government"*, to be known as *"The West Virginia State Bar"*, for the purpose of enforcing such rules. All attorneys at law practicing in the state are required to be members and to pay annual fees of $5.00 (since increased to $15.00 by vote of the members). Such Act expressly recognized the inherent rule making power of the Supreme Court of Appeals in the premises and provided that as rules are adopted by the court all laws in conflict therewith shall be of no further force or effect.

Pursuant to this enabling legislation and under the inherent power of the Supreme Court of Appeals, The West Virginia State Bar was created and the purposes of the act effectuated.[1] The Constitution of the State Bar and pertinent excerpts from the by-laws constitute Appendix B to this brief.

There are only three constitutional committees of the State Bar: (1) committee on legal ethics, (2) committee on unlawful practice, and (3) district committees on grievances. (Art. IV).

The State Bar has at all times centered its activities in the important fields of providing effective discipline and curbing unlawful practice.

During the past decade in the interest of protecting the public in the administration of justice, about 149 grievances have been investigated, some 120 hearings have been held by the legal ethics committee, and upward of 100 investigations, including a few court proceedings, have been

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1. On March 28, 1947, an order was entered promulgating rules: (1) defining the practice of law, (2) promulgating a code of professional ethics, and a code of judicial ethics, and (3) the constitution and by-laws of The West Virginia State Bar (amended in 1951 as found in Appendix B). 128 W. Va. xvii-xviii.

conducted by the unlawful practice committee. Typical of activities of the State Bar in the fields of unauthorized practice and discipline, respectively, are the cases of *West Virginia State Bar v. Earley* (W. Va. 1959) 109 S. E. 2d 420, and *Re Philip H. Marcum*, 135 W. Va. 126, 62 S. E. 2d 705 (1950).

The State Bar has not been idle with respect to other appropriate endeavors designed to improve the profession and raise the standards of justice in West Virginia. As reported in 44 Journal of The American Judicature Society (October, 1960), p. 99, this state placed in effect on July 1, 1960, Rules of Civil Procedure modeled upon the Federal Rules. This article correctly notes that the State Bar's Committee on Civil Rules attended meetings over a period of eight years and traveled to all sections of the state for such purposes "at their own expense." The fees collected by the State Bar from its 1624 members have only been adequate to maintain a small office and to do the minimum tasks incident to discipline and unlawful practice. As a result, the out of pocket expenses incident to a function as important as devising improved rules of practice were not paid for by membership dues.

In the field of legislation, the State Bar has primarily devoted itself to informing the bench and bar of pending legislative proposals and has been conspicuously conservative in proposing legislation or taking a position on pending bills.

In addition to the State Bar, The West Virginia Bar Association, a voluntary organization, composed of a large majority of all the lawyers of this state, has continuously functioned since 1886. The voluntary association was and remains a strong proponent of the integrated bar. Since the voluntary association has no official status and lacked subpoena and investigatory powers, it was unable to cope

effectively with the problems of discipline and unlawful practice. While the State Bar and the voluntary association exist side by side, their activities do not overlap. The West Virginia Bar Association has remained active in the legislative field and currently has constitutional standing committees on (1) judicial administration and legal reform, (2) uniform state laws, (3) criminal law and procedure, (4) constitutional provisions, and (5) code corrections and improvement. Thus, in West Virginia, the State Bar, as the official body, performs those functions which it is peculiarly fitted to accomplish, while many other functions are performed by the voluntary association.

West Virginia has an important interest in maintaining its State Bar which has made significant contributions by maintaining high standards of professional conduct, by curbing unlawful practice, and by improving the administration of justice, all to the benefit of the public. Appellant's position in this case manifestly poses a threat to the effectiveness of all integrated bars and perhaps to their continued existence.

ARGUMENT

Inherent Powers of Courts

The validity of the integrated bar is based on the inherent powers of the court to regulate, in a reasonable manner, officers of the court with respect to their professional responsibilities. Transcending in certain respects the attorney-client relationship, in which a lawyer is and should be as independent as a judge, there are certain other public responsibilities incident to the office of attorney at law which must be observed. It appears to be universally recognized that the trust and confidence which must necessarily be reposed in an attorney by both clients and courts require a very high standard of appreciation of the duties owing to the clients, the profession, the court and the public at large.[1] To maintain such standards courts have the inherent power to make investigations and to discipline attorneys engaged in unethical practices; and, also, to prevent unlawful practice by laymen or corporations who may be incompetent and, in any event, are not required to observe any standards of ethics and certainly not the standards expected of a duly qualified lawyer. Courts by their nature and function are not equipped to handle investigations of these subjects and make findings and recommendations with respect thereto. Not only is the necessary administrative machinery lacking for this purpose, but the courts may ultimately be required to make decisions and impose sanctions with respect to the subject of the investigation.

It is believed that the rise in American integrated bars resulted in part from changes in the problems of discipline and unlawful practice of the past seventy-five years. A

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1. For an apposite statement see *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, 247, (1957).

court can observe personally but a small part of the activities of lawyers. The profession has dramatically changed from a bar of advocates "riding circuit" with the judges to one of predominantly office practice. The complexities of modern life have necessitated a vast enlargement of the function of the lawyer, both in and out of the court room. The problems of unlawful practice have likewise grown in scope and complexity. Today, the trial court can spot an interloper in the ranks of advocates, but finds it very difficult to deal with the ingenious "consultant" who so often without scruples or competency engages in unlawful practice to the great detriment of the public.

Although somewhat cautious and slow to act, courts are not powerless to deal with situations vital to the integrity of bench and bar and the improvement of justice. The right of the court to make reasonable rules in the premises is unchallenged. The issue posed by this case appears to be whether it is reasonable and proper for the court to establish an integrated bar as an administrative agency to enforce its rules. Since a court can clearly apply proper rules and regulations to an individual member of its bar, as an officer of the court, is his constitutional liberty placed in jeopardy by an organization of all such officers for the purpose of coordinating and enforcing such rules?

An analysis of the essential nature of an integrated bar will dispel apprehension of violation of freedoms which the bar, above all others, has protected throughout our history. Confronted with the problems of discipline and unlawful practice and need for improving the administration of justice, it is natural and proper that a court would turn to its bar for help and cooperation. Doubtless the court could set up committees of the bar or ask a voluntary association to do the job. This in fact has frequently been done over the years but without conspicuous success largely because a committee is local in character and lacks state-wide

objectivity and official status. Furthermore, court appointed committees represent but a small minority of the bar. Even active and large voluntary associations fail to represent a significant minority. Should powers adequate to cope with discipline and unlawful practice be conferred on a voluntary association or committee? Since these problems are of vital concern to every member of the bar, it appears more reasonable that with the participation of all practitioners a more effective solution can be reached. Moreover, the rights of the minority receive full protection. The West Virginia State Bar is a model of the democratic process. Each lawyer not only has an equal voice, but the by-laws assure that each voice is effective. The least influential, the most eccentric, the poorest, the dissident—each can vote secretly for a member of the board of governors. The board is representative and it selects officers and the committees. The court has simply reposed in the whole bar the opportunity and responsibility of selecting committees and officers to administer the court's rules. While not perfect, because it is a human agency, the integrated bar has functioned well.

Compulsory Membership

The integrated bars require all practitioners to be members and pay dues annually. The issue of compulsion raises a spectre. Compulsion is more apparent than real. Stripped of rhetoric, the fact is that every practitioner must be first legally admitted to the bar by meeting the tests of education, bar examinations and good moral character. He is and must remain a member in good standing of the bar to practice the profession. Whether the bar is integrated in no wise changes these fundamentals. In every essential respect there is no difference in this state between the requirement of being a member of the bar of the Supreme Court of Appeals and being a member of the State Bar, the agency of the court.

The integrated bar does not violate freedom of association. A member of the West Virginia State Bar enjoys every freedom to associate or not to associate that he could claim as a member of the bar of the Supreme Court of Appeals, absent integration.

The issue here is the reasonableness of court rules applied to members of the bar individually or as a whole. Integration *versus* "disintegration" is hardly a question fraught with constitutional issues.

Compulsory Payment of Fees

Here again, appellant appears to beg the question. An annual fee to engage in the practice of a profession is not uncommon and is properly within the powers of the state. While state revenues might properly be used to maintain discipline of the legal profession and contain unlawful practice, it is good policy to provide that the costs thereof be defrayed by the lawyers themselves. Lawyers generally prefer that taxes they pay be used for matters of immediate interest to them.

Every lawyer has an important stake in matters of discipline, unlawful practice, and improving the administration of justice. Each has an interest in these subjects professionally, and, also, in a more mundane sense, his financial rewards from the profession depend in some measure upon the maintenance of the integrity of the bar.

It is submitted that the nominal fees of integrated bars are reasonable exactions and in the public interest.

Freedom of Assembly and Association

Appellant urges "freedom to move in and out of an association." This libertarian generality has little, if any, relevancy to the issue here. An integrated bar is not an association within the meaning of that concept. Admission to the bar is conceded to be subject to reasonable regulation at all times. A lawyer is not always free to resign or retire from the profession if his purpose is to defeat disciplinary action. He cannot, once having been retained, retire as counsel without good cause. No person is free to become a member of the bar at will. Membership in a state bar is the equivalent of being lawfully licensed to practice. Within its proper sphere of administering rules of the court a state bar possesses a status separate and distinct from an association. An integrated bar coordinates professional activities of lawyers with respect to matters of discipline, unlawful practice and kindred matters of concern to the whole bar.

Appellant's argument on this point carried to its logical conclusion would deny to the states the right to compel school attendance. Compulsory education involves more stringent limitations on personal liberty, freedom to associate or not associate, to express or refrain from expressing opinions and beliefs, than perhaps any other governmental activity. Yet the public interest requires compulsory school attendance as it does reasonable regulation of the practice of law.

The Integrated Bar Is Not A Guild Or Political Party

State bars are not established to foster a monopoly or provide economic control of the practice of law. The profession, with or without an integrated bar, is closed to those who cannot meet the tests of good moral character, prescribed educational standards, bar examinations and,

in some instances, internship in an approved law office. The standards of ethical conduct must be maintained throughout a lawyer's professional life. The primary purpose of The West Virginia State Bar is to administer rules relating to the practice of law, most, if not all of which had been recognized and in effect for years.

The State Bar is authorized to take action only in the professional field and there but in a reasonably limited way. Its every action is subject to the restraint of deliberation by a body of professionals notoriously independent and at times contentious. Significantly, the court at all times has the power to change its rules, at will, and would not hesitate to do so in the event of abuse or unreasonable action.

The best test of denial of freedoms is experience. The "consent of the governed" is not an empty phrase to lawyers. What other body of men is so sensitive to arbitrary or unreasonable exercise of power? The almost universal agreement by the profession and the public that the integrated bar, where it exists, is a worthwhile and reasonable measure is strong evidence that there has been no arbitrary action or denial of freedoms.

Freedom of Opinion and Speech

Appellant labors the contention that an integrated bar unconstitutionally impairs freedom of conscience and speech within the meaning of the First Amendment.

In truth the state bar affords an opportunity and invitation to each individual to express his opinion on matters of professional concern. Moreover, no restriction or sanction is imposed on the minority or dissident. They are free to oppose the majority at any time and, being lawyers, they often do. No one is compelled either to speak or remain

silent. Each member is free to do as he chooses. Being professional adversaries, the bar expects and respects dissenters. The entire spectrum of views on the law, religion, philosophy, politics and every other subject exists among members of the bar. The beliefs and opinions of the individual are not subject to any restriction by the state bar.

Rarely, if ever, is there unanimous agreement on any subject. Even the Signers of the Constitution of the United States were not of one mind. The deliberations of the Convention reveal the widest range of opinion and compromises were made to the full satisfaction of no one. Because of the widespread fear that many delegates would refuse to give their individual assent to the final draft of the Constitution, in order to give the appearance of unanimity, Gouverneur Morris devised his famous formula "Done in convention by the unanimous consent of the States present . . .", which did not require the delegates to evidence their individual approval by signing. Even with this "state consent" formula several delegates refused to sign and thereafter the delegates freely argued the merits of the proposed Constitution.

Our Constitution was forged by healthy debate and reconciliation of differing views. The state bars function on the same principle. The rights of the minority are protected fully within the meaning of the constitutional freedoms.

Freedoms are without meaning except as related to human experience, desires and purposes. Webster, who had more than a cursory understanding of the constitutional and political aspects of the subject, held that "Liberty exists in proportion to wholesome restraint." Members of the bar historically have been the protectors of our freedoms, yet the bar has recognized the correlative responsibility of maintaining the highest standards of professional

integrity, knowing that without unquestioned integrity the bar cannot perform its duties effectively.[1]

Does freedom of speech authorize the doctor, the priest and the lawyer to publicize confidential communications? Does the First Amendment contemplate that a member of a court is free to divulge the secrets of the conference or announce decisions on his own? As was stated in a recent concurring opinion of this court:

> "Obedience to ethical precepts may require abstention from what in other circumstances might be constitutionally protected speech." *Re Sawyer, 360 U. S. 622, 646 (1959).*

The important concern of the public, bench and bar in the matter of discipline and unlawful practice can be met reasonably and effectively through the agency of the integrated bar without denying to anyone the full force and vigor of constitutional freedoms.

It is submitted that the integrated bar was conceived and functions within the traditional framework of American constitutional freedoms and that it is a reasonable exercise of administrative procedures conducive to the public good. That it will remain so is assured by the traditions of the profession and the power of the court to deny or restrict, at will, state bar powers, if this should ever become necessary.

Human dignity and freedom for the individual hang in the balance the world over in these critical times. This court with courage and vigor has breathed new life into the Bill of Rights.

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1. Santayana aptly says that liberty is ". . . . not freedom to wander at hazard or to let things slip, but on the contrary freedom to legislate more precisely, at least for oneself, and to discover and codify the means to true happiness." Essay on Classic Liberty.

State courts in establishing the integrated bar have contributed to the protection of freedom by strengthening the profession, whose members are the sworn defenders of liberty, no matter how unpopular the particular cause may be. The vigor, integrity, honor and independence of lawyers have been furthered by the coordination of their professional efforts through bar integration and without denying to any individual his full constitutional rights.

Conclusion

An analysis of the purpose, function and structure of the integrated bar demonstrates that it does no violence to the Bill of Rights as interpreted by this Court in the cases so ably discussed by counsel for the parties.

Accordingly, it is submitted that there is no substantial federal question raised and that appellee's motion to dismiss should be sustained, or that this case should be affirmed.

Respectfully submitted,

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APPENDIX A

WEST VIRGINIA STATE BAR ACT

(W. Va. Code 51-1-4a, Michie's Code § 5183(1)).

§ 5183(1). (4a) *Rules Governing the Practice of Law; Creation of West Virginia State Bar; Providing Its Powers, and Fees for Administration.*—The Supreme court of appeals of West Virginia shall, from time to time, prescribe, adopt, promulgate, and amend rules:

(a) Defining the practice of law.

(b) Prescribing a code of ethics governing the professional conduct of attorneys-at-law and the practice of law, and prescribing a code of judical ethics.

(c) Prescribing procedure for disciplining, suspending, and disbarring attorneys-at-law.

(d) Organizing and governing by and through all of the attorneys-at-law practicing in this State, an administrative agency of the supreme court of appeals of West Virginia, which shall be known as "The West Virginia State Bar". The West Virginia state bar shall be a part of the judicial department of the state government and is hereby created for the purpose of enforcing such rules as may be prescribed, adopted and promulgated by the court from time to time under this section. It is hereby authorized and empowered to perform the functions and purposes expressed in a constitution, by-laws and amendments thereto as shall be approved by the supreme court of appeals from time to time. All persons practicing law in this State shall be members of the West Virginia state bar in good standing: Provided, however, that the West Virginia state bar shall not become operative until its constitution and by-laws shall first have been submitted to all attorneys-at-law practicing in this State, including those presently serving in the armed forces of the United States, for the purpose of securing the suggestions and recommendations of all such attorneys-at-law, for a period of at least sixty days prior to the entry of an order by such court approving said constitution and by-laws.

(e) Fixing a schedule of fees to be paid by attorneys-at-law practicing in the State of West Virginia for the purpose of administering this section, and providing for the collection and disbursement of such fees: Provided, however, that the annual fees to be paid by any attorney-at-law shall not exceed the sum of five dollars, unless a majority of the attorneys-at-law practicing in this State consent to the payment of a higher annual fee.

The inherent rule-making power of the supreme court of appeals is hereby declared.

When and as the rules of the court herein authorized shall be prescribed, adopted, and promulgated, all laws and parts of laws that conflict therewith shall be and become of no further force or effect to the extent of such conflict. (1945, c. 44.)

APPENDIX B

CONSTITUTION AND PARTS OF BY-LAWS OF WEST VIRGINIA STATE BAR

(Adopted at the Annual Meeting on October 7, 1950, and approved by the Supreme Court of Appeals on April 10, 1951.)
2 Michies W. Va. Code 111—120 (1955)

CONSTITUTION

ARTICLE I

Name and Location of Office

This agency of the Supreme Court of Appeals of West Virginia shall be known as "The West Virginia State Bar". Its principal office shall be maintained in the Capitol of the State of West Virginia, or at such other place as may be designated by the Board of Governors.

ARTICLE II

Objects and Purposes

The object of The West Virginia State Bar shall be to protect the interests of the public; to advance the administration of justice and the science of jurisprudence; to improve the relations between the public and the Bench and the Bar; to uphold and elevate the standards of honor, integrity, competency and courtesy in the legal profession; and to encourage cordial relations among its members.

It is the purpose of The West Virginia State Bar to give effect to pertinent rules of the Supreme Court of Appeals of West Virginia, and to perform the functions expressed in this Constitution and By-Laws.

ARTICLE III

Membership

The membership of The West Virginia State Bar shall consist of all persons lawfully admitted to the practice of the law in the State of West Virginia. No person shall practice law in the State of West Virginia unless he is an active member in good standing of The West Virginia State Bar.

ARTICLE IV

Government; Board of Governors; Officers and Committees

The West Virginia State Bar shall be governed by a Board of Governors. There shall be a Committee on Legal Ethics and a Committee on Unlawful Practice. There shall also be for each State Bar District

created by the By-Laws a Committee on Grievances. Such Board shall select a President, a Secretary-Treasurer, and the members of said committees. Such Board may from time to time create, alter and terminate other offices and committees, with such powers, authority and duties as it may deem proper. All officers, except the Secretary-Treasurer and administrative assistants, and the members of such committees shall be selected either from the membership of such Board or from The West Virginia State Bar.

ARTICLE V

Meetings

The members of The West Virginia State Bar shall convene in one general meeting each year, which shall be known as the Annual Meeting, and in such special meetings as shall be called by the Board of Governors. Such meetings shall be held at times and places fixed by said Board. The members present at an annual or a special meeting shall constitute a quorum.

ARTICLE VI

Amendments

Subject to the approval of the Supreme Court of Appeals of West Virginia, this Constitution may be altered at any annual meeting on recommendation of the Board of Governors by vote of a majority of the members present or, without such recommendation, by vote of two-thirds of the members present.

BY-LAWS

ARTICLE I

Definitions

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ARTICLE II

Members

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§ 3. **Active Membership.**—An active member in good standing shall be a person lawfully admitted to the practice of the law in the State of West Virginia, who is lawfully engaged in the practice of the law in this State, who is enrolled as an active member, who is not under suspension, and who shall each year duly pay the annual active membership fee to the State Bar.

§ 4. **Enrollment as an Inactive Member.**—Any member of the State Bar not under suspension, who does not desire to engage in the practice of

the law in this State, may, upon written request to the Secretary, be enrolled as an inactive member. Every Judge of a court of record of this State shall be enrolled as an inactive member during his continuance in such office. No member of the State Bar practicing law in this State, or occupying a position in the employ of or rendering any legal service for an active member, or occupying a position wherein he is called upon to or does give legal advice or counsel or examine the law or pass upon the legal effect of any law, transaction, instrument (whether or not of record), or state of facts, except Judges of courts of record, shall be enrolled as an inactive member.

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ARTICLE III

Active Membership Fees

§ 1. **Amount.**—The annual membership fee for active members shall be fixed by the Board and shall not exceed the sum of Ten Dollars ($10.00) unless consent to a higher fee is secured as hereinafter provided. Any time the Board shall desire to increase the annual membership fee, it shall submit the proposed increase to all the active members, by mail, and if a majority of the members voting consent to the proposed increase, the Board may put such increased dues into effect upon securing the approval of the Supreme Court of Appeals. In any such mail vote, the Board may include in the question to be voted upon, a provision fixing the annual membership fee of active members who have been admitted to practice law for not more than five (5) years in West Virginia or any other jurisdiction at Ten Dollars ($10.00), irrespective of the fact that the approval of the proposal submitted will result in an increase in the membership fee for all other active members of the State Bar.

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§ 3. **Penalty for Nonpayment of Membership Fees.**—On the 1st day of September of each year, a penalty of $2.00 shall be added to all delinquent active membership fees. On or after this date, the Secretary shall notify all members in default in the payment of membership fees of their delinquency and that the penalty has attached. Such notice may be given by United States mail, addressed to such member at his last known post-office address.

§ 4. **Suspension for Nonpayment of Membership Fees.**—If a member remains in default for thirty days after the date of mailing the notice provided by the preceding section, he shall be automatically suspended from active membership in the State Bar and shall not further engage in the practice of law until he has been reinstated. The Secretary shall give notice of such suspension to the Judges of the courts of record of the Judicial Circuit in which such delinquent member principally

practices, as well as to the Clerk of the Supreme Court of Appeals, and it shall be the duty of said Judges and of the Supreme Court of Appeals to refuse and deny to such member the privilege of appearing and practicing in said Courts, until such time as such member shall have been reinstated as an active member. Written notice of such suspension shall be given to such suspended member and service thereof shall be complete upon mailing the same addressed to such suspended member at his last address appearing upon the records of the State Bar. It is the duty of every member of the State Bar to keep informed relative to the payment of his dues, and failure to receive notice of nonpayment or of suspension shall not affect the operation of such suspension.

§5. **Reinstatement of Members Suspended for Nonpayment of Membership Fees.** —Whenever a member suspended for nonpayment of membership fees shall have paid all accrued fees and penalties and been reinstated, the Secretary shall thereupon give notice thereof to the Judges of the courts of record in the Judicial Circuit in which such member principally practices, and to the Clerk of the Supreme Court of Appeals.

ARTICLE IV

Board of Governors

§1. **Powers and Duties.** —The powers of the State Bar shall be exercised by the Board of Governors.

The Board shall have general charge of the administration of the affairs of the State Bar and it shall diligently and vigilantly formulate such policies and do such things as and when in its judgment may be necessary and proper for the accomplishment of the objects and purposes of the State Bar.

The Board may establish, and may combine and terminate, standing, administrative and special committees as it may deem advisable, and may vest in and delegate to such committees such of its jurisdiction, functions, powers and authority as it may deem proper. Such committees may be composed of its own members or of members of the State Bar. The members of such committees shall hold office at the pleasure of the Board.

The Board may establish, and may combine and terminate, Sections of the State Bar, and may establish foundations and special funds for the furtherance of the objects and purposes of the State Bar and receive contributions to such foundations and special funds from members and others.

The Board may promulgate, and may amend and revoke, rules and regulations for the transaction of its business, for the procedure in meetings of members of the State Bar, for the procedure and reports

of committees and Sections, and for the general administrative conduct of the State Bar.

The Board shall fix salaries and provide for the payment thereof and of other necessary expenses of the State Bar. It shall cause proper books of account to be kept, have them audited at least annually, and have presented to each annual meeting a statement of the receipts and expenditures of the State Bar.

The enumeration above and elsewhere in these By-Laws of particular powers or duties of the Board, or of officers or committees, shall not be deemed to imply any denial of, or any restriction or limitation upon, the general and plenary powers of the Board to govern and administer the State Bar and to exercise all its powers.

§ 2. **Membership.**—The Board of Governors shall consist of eighteen members, as follows:

(a) The President;

(b) The retiring President for the first year of his retirement, and,

(c) One Governor from each of the State Bar Districts herein established.

§ 3. **Election and Term.**—In the year 1951 an election shall be conducted for Governors in all the State Bar Districts, for terms as follows:

(a) One member each from State Bar Districts 1, 2, 3, 4 and 5 for a term of one year;

(b) One member each from State Bar Districts 6, 7, 8, 9 and 10 for a term of two years; and,

(c) One member each from State Bar Districts 11, 12, 13, 14, 15 and 16 for a term of three years.

In each year thereafter, Governors shall be elected, each for three year terms, from the State Bar Districts in which vacancies occur in that year by reason of the expiration of the term of office of a Governor theretofore elected. No Governor who has served three years shall be eligible to succeed himself.

The term of office of each Governor shall commence at the conclusion of the annual meeting next succeeding his election, and he shall hold office until his successor is elected and qualified.

* * * * *

§ 5. **Governors.**—A Governor shall have his principal office for the practice of the law in the State Bar District which he represents, and

his removal thereof from such district shall forthwith terminate his Governorship. A Governor shall be an active member of the State Bar in good standing, and his loss of that status in any manner shall forthwith terminate his Governorship.

§ 6. **Nomination of Governors.**—Nomination for the office of Governor shall be by written petition signed by not less than ten members of the Bar in the District where such nominee has his office, except that where there are fewer than ninety members in such district, the signatures of ten per cent of the members shall be sufficient. No member shall sign more than one nominating petition in any year. If in any year the Secretary does not receive within the time fixed by the Board, from any State Bar District for which a Governor is to be elected in that year, a petition nominating an eligible person for Governor, the President shall appoint a committee from the Board, and that committee shall nominate at least two eligible persons.

§ 7. **Election of Governors.**—Each Governor shall be elected by a secret mail vote of the active members of the State Bar having their principal offices for the practice of the law in the State Bar District in question. Such elections shall be conducted and canvassed, and any tie votes determined by lot, in accordance with such rules and regulations as the Board may promulgate from time to time. In every such election the ballots shall be returned to the Clerk of the Supreme Court of Appeals and remain in his custody until canvassed.

* * * * *

ARTICLE VI

Procedure for Disciplining, Suspending and Disbarring Attorneys-at-Law

Memo.: This Article, prescribed, adopted and promulgated as a rule of the Supreme Court of Appeals of West Virginia, supersedes the "Procedure for disciplining, suspending and disbarring attorneys-at-law", promulgated by an order of said Court, entered on March 28, 1947, and, to the extent of any conflict, renders of no further force or effect any laws and parts of law that conflict herewith.

§ 1. **Duties.**—The standard of professional ethics and conduct of the Bench and Bar of the State of West Virginia is of the highest importance to the people of the State, to the State itself, and to the members of the legal profession. It is incumbent upon every member of the profession, and particularly upon those who have undertaken the responsibilities and authorities of judicial preferment, to actively uphold those standards and to act diligently and vigilantly in the investigation and prosecution of violations of those standards.

It shall be the duty of every member of the State Bar to make full report to the Secretary concerning every breach of professional standards which shall come to his attention.

§ 2. **Grounds for Action.**—Every member of the legal profession shall observe the highest standards of professional conduct. The canons of ethics promulgated by the Supreme Court of Appeals of West Virginia now or hereafter in effect shall be carefully observed. Any allegation of: violation of such canons; the commission of a criminal offense showing professional unfitness or moral turpitude; the detention of any property or money collected in any professional or fiduciary capacity without bona fide claim thereto; the solictation of professional business; or any conduct involving fraud or deceit, shall, among other things, constitute good grounds for investigation as hereinafter provided and, if deemed warranted, for the institution of appropriate proceedings.

§ 3. **Remedies Cumulative.**—Nothing in this Article contained shall be deemed to interfere with the inherent powers of any court.

Part A—Committee on Legal Ethics.

§ 4. **Creation; Jurisdiction.**—There shall be a committee, known as "The Committee on Legal Ethics of The West Virginia State Bar", which shall have jurisdiction of all matters respecting legal ethics, unprofessional conduct, malpractice and, in the most general sense, the professional standards of the Bench and Bar of West Virginia, whether arising before or after the promulgation of these rules.

Such committee shall, on its own motion, or upon the request of the Board or the President, or upon the request of any court of record or judge thereof, or upon the verified complaint of any person, as to any matter within its jurisdiction, make investigations, dismiss complaints and requests, administer reprimands, issue charges, hold hearings, institute proceedings, and do all such other acts as are authorized in this Article.

Such committee shall proceed, in any matter or act mentioned or referred to in the two preceding paragraphs, in the name of The West Virginia State Bar, or in the name of such committee, or in the name of any authorized sub-committee or member or members, as it may deem proper.

Such committee may render advisory opinions on any question of professional conduct. It may investigate and approve or disapprove publications in the nature of legal lists or directories as a medium of professional listing of members of the State Bar.

With the consent of the Board, such committee may promulgate, and amend and revoke, rules and regulations for the transaction of its business.

The enumeration above and elsewhere in this Article, of particular powers and duties of such committee, shall not be deemed to imply any denial of, or restriction or limitation upon, the responsibility of such committee, and its general and plenary power, to exercise all the powers of the State Bar in regard to the professional standards of the Bench and Bar of West Virginia, and no action of the Board shall be required to authorize the exercise of such powers.

§ 5. **Members; Terms; Vacancies; Removals.** — The Committee on Legal Ethics shall consist of seven members, selected by the Board from the active members of the State Bar. When first constituted, three members shall be selected for terms of one year, two for terms of two years, and two for terms of three years. Thereafter, in each year, members shall be selected, each for three year terms, to fill vacancies occurring in that year by reason of the expiration of the terms of office of members theretofore selected. Vacancies occurring for other reasons shall be filled by the Board for the unexpired terms. If a member of such committee be determined by the Board to have become incapacitated from performing his duties as such member, or be absent from any two consecutive meetings of such committee, without cause deemed adequate by the Board, he may be removed by the Board. The term of office of each member shall commence at the conclusion of the annual meeting designated by the Board in making his appointment.

§ 6. **Officers; Sub-Committees.**—For such committee a Chairman and a Vice Chairman shall be designated annually by the Board from the members of such committee. Such committee may designate other officers and sub-committees, from its own members, with such of its powers and responsibilities as it may deem proper.

§ 7. **Meetings: Quorum.**—Such committee shall meet, at any place in the State of West Virginia, upon call of its Chairman or Vice Chairman, or upon call of the President of the State Bar. Upon written request of five Governors the President or Secretary shall call a meeting of such committee.

Three members of such committee shall constitute a quorum.

§ 8. **Summons and Subpoena Powers.**—In any investigation or hearing under this Article, such committee, any Grievance Committee, any authorized member of either thereof, or any Governor or officer of the State Bar shall have the power, by summons or subpoena issued under the hand of any authorized member of either committee or of any

Governor or such officer, to summon and examine witnesses under oath administered by any member of said committees, any Governor or such officer, and to compel their attendance and the production of any and all books, papers, letters and other documents necessary or material to the inquiry.

§ 9. **Effect of Summons or Subpoena.**—Any such summons or subpoena issued as provided in the preceding section shall have the same force and effect as a summons or subpoena issued by a Circuit Court of the State of West Virginia. If any witness or other person shall fail or refuse to appear, or to be sworn, or to testify, or to produce books, papers, letters or other documents demanded, upon application to a Circuit Court or the Judge thereof within the Congressional District in which any investigation or hearing is being conducted, a rule or an attachment shall be issued against such witness or other persons as in cases of contempt.

§ 10. **Reports.**—Such committee shall report to the Secretary in writing immediately upon initiating any investigation or other action, and shall thereafter report to him from time to time the status thereof, and upon final disposition of any matter shall forward to him a report thereon with the complete file thereof.

Part B—Complaints and Investigations.

§ 11. **Complaints.**—Any complaint made or received by any member of the State Bar shall be forwarded by him to the Secretary. The Secretary shall also receive complaints from any court or judge, and from the public. The Secretary shall make a record of each such complaint and forthwith refer it to the Committee on Legal Ethics.

§ 12. **Investigations; Reprimands.** — Without issuing any notice or charges, such committee shall investigate, or cause to be investigated by its sub-committee or by the proper Grievance Committee, to the extent deemed necessary, every complaint, request and information coming before it, and said Legal Ethics Committee may dismiss the same, or may administer reprimands, or may take any other action authorized by this Article, as in its judgment may be warranted.

Part C—Formal Hearings.

§ 13. **Formal Hearings.**—Such Legal Ethics Committee may, but shall not be required to, hold a formal hearing on any matter before it.

§ 14. **Procedure.**—At least ten days prior to any such formal hearing, a notice of the time and place of the hearing, containing a plain statement of the charges against him, shall be served upon any accused person in person or by registered mail at his last known address. Such hearing shall be held in the county in which he resides, or in which

he has his principal office, or in which the alleged offense, or any part thereof, was committed, as the committee may determine. The rules of evidence applicable in equity cases shall govern at such hearings. Evidence may be taken by deposition according to the procedure in equity cases. An accurate record shall be made of the proceedings at such formal hearings, unless waived in writing by the accused person.

§ 15. **Prosecution.**—The charges at any such hearing may be prosecuted by any member or members of said committee or by counsel (not a member of said committee) appointed by the Board or President on the request of said committee. It shall be the duty of each attorney-at-law so appointed to prosecute such charges diligently and to the best of his ability.

§ 16. **Rights of Accused Person.**—Any person so accused may be represented by counsel at such hearing. He shall have the right to have summons and subpoenas issued in his behalf by any person so authorized in this Article. He shall be intitled, at his own cost, to a copy of the record of the hearing.

§ 17. **Determination.**—Upon the termination of such hearing by said committee, it shall consider the case, and it may dismiss the charges, or may administer a reprimand, or may take any other action authorized by this Article, as in its judgment may be warranted.

Part D—Institution of Proceedings by Committee.

§ 18. **Choice of Procedure.**—If the Committee on Legal Ethics be of the opinion, after such investigation and hearing, or either, as it may deem proper, that a charge of annulment or suspension of license is merited, it may proceed under this Part D or in accordance with any applicable procedure under Part E of this Article, or both, as the committee may determine.

§ 19. **Institution of Proceeding.**—When said committee shall decide to proceed under this Part D, it shall file in the Circuit Court of the county in which the accused person resides, or in which he has his principal office, or in which the alleged offense, or any part thereof, was committed, or which otherwise has jurisdiction, as the committee may determine, a verified complaint, with such report of the proceedings before it as it may deem advisable, and with a recommendation.

§ 20. **Procedure.**—Upon the filing of such complaint, report and recommendation, such court shall issue an order to the accused to show cause why said recommendation should not be put into effect by a court order. Such order shall be returnable not more than ten days from the date of its entry. Upon failure of the accused to appear and deny the charges, the court shall forthwith examine the papers filed

and shall suspend or annul the license of the accused attorney as in its judgment shall seem right. If the accused shall appear and deny the charges, the matter shall be forthwith considered by the court on the record of the papers filed, unless good cause be shown for further hearing, in which event a day certain, not more than twenty days after the return day of the order to show cause, shall be set for such hearing. If the accused be found guilty by the court, on the record or on such further hearing, the court shall suspend or annul his license, or shall administer a public reprimand, which shall be made a matter of record in said court, as in its judgment shall seem right. All such matters shall be heard and determined by the court without a jury. The court shall give due weight to the recommendation of the committee.

§ 21. Prosecution.—The charges in any such proceeding may be prosecuted by any member or members of said committee or by counsel (not a member of said committee) appointed by the Board or President on the request of said committee. It shall be the duty of each attorney-at-law so appointed to prosecute such charges diligently and to the best of his ability.

Part E—Other Proceedings.

§ 22. Definition.—In this Part E unless the context or subject matter otherwise requires, "court" means the Supreme Court of Appeals of West Virginia or any court of record of this State, except a county court.

§ 23. Annulment on Conviction.—Any court in which any attorney shall be convicted of any crime involving moral turpitude or professional unfitness shall, as part of the judgment of conviction, annul his license to practice law.

Any court before which any attorney has been qualified, upon proof that he has been convicted—

(a) Of any crime involving moral turpitude or professional unfitness; or,

(b) Of receivng money for his client as his attorney and failing to pay the same on demand, or within six months after receipt thereof, without good and sufficient reason for such failure, as in the statute provided; shall annul his license to practice law.

§ 24. Suspension on Conviction.—Any court before which any attorney has been qualified, upon proof that he has been convicted of any felony not involving moral turpitude or professional unfitness, shall suspend his license to practice law for such time as the court may prescribe.

§ 25. Suspension or Annulment for Malpractice. — If any court observe any malpractice therein by any attorney, or if a verified complaint be made to any court of malpractice by any attorney therein, such court shall order the attorney to be summoned to show cause why his license shall not be suspended or annulled. A summons shall thereupon be issued by the clerk of such court containing a copy of the charges and requiring the attorney to appear and answer the same on a day to be named therein, not more than twenty days from the date of issuance. Such summons may be served in the same manner as a summons commencing an action may be served, and the service shall be made at least five days before the return day thereof. Upon the return of the summons executed, if the attorney appear and deny the charge of malpractice, the court shall, without a jury, try the same. If the attorney be found guilty by the court, or if he fail to appear and deny the charge, the court may either suspend or annul the license of such attorney as in its judgment shall seem right.

§ 26. Suspension for Failure to Pay Money. — Whenever a judgment or decree shall be standing or rendered in any court against an attorney for money collected by him as such, such court shall suspend the license of such attorney until such judgment or decree shall be satisfied.

Part F—Reinstatement.

§ 27. Reinstatement from Suspension; Necessity. — When for any reason the license of any person to practice law has been or shall be suspended, whether or not for a limited time or until restitution or some other act be made or done, such person shall not become entitled to engage in the practice of law in the State of West Virginia, whether such time has elapsed or such restitution or other act be made or done, until such person shall have been restored to good standing as a member of the State Bar as herein provided.

§ 28. Procedure for Reinstatement from Suspension. — A person whose license has been or shall be suspended, who shall desire reinstatement, shall file a petition with the Secretary of The West Virginia State Bar, addressed to the Board of Governors thereof, reciting the cause of his suspension and stating what he shall have done by way of restitution or other act, by reason of which he believes he should be reinstated. Said Secretary shall refer such petition to the Committee on Legal Ethics, which shall promptly make such investigation thereof as it may deem proper, and report thereon to said Board, which shall consider such petition and report, and if satisfied that such restitution has been fully made or other act fully done, and that such person is otherwise worthy to engage in the practice of the law, and that such person has paid all accrued membership fees and penalties, shall determine such person to be reinstated, and that his license is restored in full force and effect, and that he is restored to good standing as a member of the State Bar.

Part G—General Provisions.

§ 29. Statewide Effect of Annulment or Suspension of License.—Any annulment or suspension of a license to practice law shall operate and be effective throughout the State of West Virginia.

§ 30. Effect of Annulment.—The annulment of a license to practice law by any court of competent jurisdiction shall revoke and forever terminate such license, and shall constitute a disbarment.

§ 31. Report by Clerk of Suspension or Annulment.—The clerk of any court, in which any order in regard to the suspension or annulment of a license to practice law shall be made, or in which a reprimand shall be entered of record, shall promptly certify a copy of the same to the Secretary of the State Bar.

§ 32. Security for Good Behavior; Contempt.—Nothing in this Article shall affect the right of any court to require from an attorney therein security for his good behavior, or to fine him for contempt of court.

§ 33. Appeals.—An appeal shall lie from any court of record of limited jurisdiction established under the provisions of section nineteen of article eight of the Constitution of this State, to the circuit court of the county, and from any circuit court to the Supreme Court of Appeals of the State, from any order suspending or annulling, or refusing to suspend or annul, the license of any attorney proceeded against under the provisions of this Article, but no application for any appeal from any order of suspension or annulment shall be entertained by any such court unless the applicant shall, at least thirty days prior to the making of such application, have given notice to the Secretary of the State Bar of his intention to apply for such appeal, together with a copy of the petition therefor. And on any such application, and on the hearing of any such appeal, the State Bar shall be heard by such court.

§ 34. Suits, etc., in Regard to Licenses; Notices.—If any person shall desire to institute any action, suit or proceeding in any court or to make any application to any court or to the judge of any court in regard to any alleged right claimed by him to practice law in this State, or in regard to any annulment of his license to practice law in this State, he shall, not less than thirty days prior to such institution or such application, give notice to the Secretary of the State Bar of his intention so to do. Such notice shall state the court or judge to which he will apply and shall set forth all pertinent facts in relation to his petition and shall be accompanied by all pertinent data, papers, documents and records. The Secretary shall refer the same to the Legal Ethics Committee, which shall promptly make such investigation thereof as

it may deem proper, and shall report thereon to such court or judge, with its recommendations. Such report and recommendations shall become part of the record of the case, and shall be given due weight by such court or judge. In any such action, suit or proceeding or on any such application, the State Bar shall be heard by such court or judge. Nothing in this Section or elsewhere in these By-Laws contained shall be construed as conferring upon any person any right to institute any such action, suit or proceeding or to make any such application.

ARTICLE VII

Committee on Unlawful Practice

§ 1. **Jurisdiction.**—The Committee on Unlawful Practice shall have jurisdiction over all matters and questions which may be considered as constituting the unlawful practice of law under the definition of the practice of law adopted by the Supreme Court of Appeals of West Virginia by rule effective May 1, 1947, and any amendments or changes thereto, and in accordance with other applicable principles of law governing and defining the practice of law in this and other jurisdictions.

§ 2. **Powers.**—Such Committee shall investigate, on its own initiative or upon request of any court or judge or upon the verified complaint of any person, any matter involving the alleged unlawful practice of law. Such Committee is empowered to dismiss any complaint, to enter into an agreement to desist from unlawful practices, or, when the facts warrant, to institute appropriate proceedings in the name of The West Virginia State Bar, or in the name of any authorized committee or of any member thereof, in any court having jurisdiction, for the purpose of securing appropriate relief.

Such Committee may act as a committee, or through any sub-committee thereof, or may refer any matter under consideration to any Grievance Committee for investigation.

§ 3. **Members; Terms; Vacancies; Removals.**—The Committee on Unlawful Practice shall consist of seven members, selected by the Board from the active members of the State Bar. When first constituted, three members shall be selected for terms of one year, two for terms of two years, and two for terms of three years. Thereafter, in each year, members shall be selected, each for three-year terms, to fill vacancies occurring in that year by reason of the expiration of the terms of office of members theretofore selected. Vacancies occurring for other reasons shall be filled by the Board for the unexpired terms. If a member of such committee be determined by the Board to have become incapacitated from performing his duties as such member, or be absent from any two consecutive meetings of such committee, without cause deemed adequate by the Board, he may be removed by the Board. The term of office of each member shall commence at the conclusion of the annual meeting designated by the Board in making his appointment.

§ 4. Officers; Sub-Committees.—For such committee a Chairman and a Vice Chairman shall be designated annually by the Board from the members of such committee. Such committee may designate other officers and sub-committees, from its own members, with such of its powers and responsibilities as it may deem proper.

§ 5. Meetings; Quorum.—Such committee shall meet, at any place in the State of West Virginia, upon call of its Chairman or Vice Chairman, or upon call of the President of the State Bar. Upon written request of five Governors the President or Secretary shall call a meeting of such committee.

Three members of such committee shall constitute a quorum.

§ 6. Summons and Subpoena Powers.—In any investigation or hearing under this Article, such committee, any Grievance Committee, any authorized member of either thereof, or any Governor or officer of the State Bar shall have the power, by summons or subpoena issued under the hand of any authorized member of either committee or of any Governor or such officer, to summon and examine witnesses under oath administered by any member of said committees, any Governor or such officer, and to compel their attendance and the production of any and all books, papers, letters and other documents necessary or material to the inquiry.

§ 7. Effect of Summons or Subpoena.—Any such summons or subpoena issued as provided in the preceding section shall have the same force and effect as a summons or subpoena issued by a Circuit Court of the State of West Virginia. If any witness or other person shall fail or refuse to appear, or to be sworn, or to testify, or to produce books, papers, letters or other documents demanded, upon application to a Circuit Court or the Judge thereof within the Congressional District in which any investigation or hearing is being conducted, a rule or an attachment shall be issued against such witness or other person as in cases of contempt.

§ 8. Reports.—Such committee shall report to the Secretary in writing immediately upon initiating any investigation or other action, and shall thereafter report to him from time to time the status thereof, and upon final disposition of any matter shall forward to him a report thereon with the complete file thereof.

ARTICLE VIII

Grievance Committees

§ 1. Duties.—The Grievance Committee in each State Bar District shall investigate within such District all matters within the jurisdictions of the Committee on Legal Ethics and on Unlawful Practice, and shall make report and recommendation thereon to the appropriate com-

mittee and to the Secretary. It shall also perform such other functions and duties in its district as the Board may prescribe from time to time, including, when authorized by the Board, the exercise of all rights, powers and duties of every kind provided for the Committees on Legal Ethics and on Unlawful Practice.

§ 2. **Members.**—Such Grievance Committees shall consist of such number of members, appointed by the Board for such terms, as the Board may from time to time determine. Each such committee shall have a Chairman, selected annually by the Board.

ARTICLE IX

Miscellaneous Provisions

§ 1. **Seal.**—The State Bar shall have a seal having the words and figures "THE WEST VIRGINIA STATE BAR—May 1, 1947" and such other design as the Board may prescribe, for the authentication of its proceedings and records. The courts in this State shall take judicial notice of such seal, and in all cases copies of resolutions, proceedings or records in the office of the State Bar, certified by the Secretary under such seal, shall be equal to the orignal in evidence. The seal shall remain in the custody of the Secretary at the office of the State Bar unless otherwise ordered by the Board.

§ 2. **Service of Process.**—Service of any notice or process upon the State Bar may be had upon the President or Secretary.

§ 3. **Non-Liability of State Bar and Its Members.**—The State Bar, its members, officers, Governors and committees shall not be liable to any member of the State Bar, or to any other person, firm or corporation, for any damage incident to any investigation, complaint, charge, prosecution, proceeding or trial.

§ 4. **Representation.**—Except as in these By-Laws expressly otherwise provided, no Section, committee or member shall assume to represent the State Bar in any court or elsewhere unless authorized to do so by the Board or by the President.

§ 5. **Limitation.**—Except as in these By-Laws expressly otherwise provided, no recommendation or report of a Section, committee, or member shall become the recommendation or report of the State Bar until approved by the Board.

§ 6. **Official Publications.**—The official publication of the State Bar shall be the "West Virginia State Bar News", which shall be published under the supervision and direction of the Board.

§ 7. **Fiscal Year.**—The fiscal year of the State Bar shall begin on July 1 of each year and end on June 30 of the next succeeding calendar year.

§ 8. **Parliamentary Rules.**—The rules contained in "Robert's Rules of Order, Revised" shall govern the proceedings at all meetings of the State Bar and of the Board in all cases to which they are applicable, and in which they are not inconsistent or in conflict with the Constitution of the State Bar, these By-Laws, and the rules and regulations adopted by the Board.

§ 9. **Costs.**—No costs shall be recoverable against the State Bar, its members, officers, Governors, or committees, and it shall be required to pay only such fees, costs and charges incident to any court proceeding as other Departments of the State Governments are required to pay.

§ 10. **Privacy of Record.**—Except to the extent otherwise in these By-Laws expressly provided, no person shall have any right to see or inspect, or to have a copy of, any paper, document or other record relating to any matter at any time before the Committee on Legal Ethics, the Committee on Unlawful Practice, any Grievance Committee, any other committee, the Board of Governors, or in the possession of any officer, except a current member of the committee in question, as to its records, or a Governor or officer of the State Bar, as to any such record.

ARTICLE X

Amendments and Referenda

§ 1. **Amendments at Annual Meeting.**—Subject to the approval of the Supreme Court of Appeals, these By-Laws may be altered or amended at any annual meeting on recommendation of the Board by vote of a majority of the members present or, without such recommendation, by vote of two-thirds of the members present.

§ 2. **Amendments by Mail Vote.**—The Board may at any time submit to the members of the State Bar, by mail, proposed amendments to the Constitution and to the By-Laws of the State Bar, in which event the action of the members shall be as effective as if the vote had been taken at an annual meeting of the State Bar, and a majority of the votes cast shall prevail.

§ 3. **Referenda.**—For the purpose of ascertaining the opinion of the membership, the Board may at any time, and when directed so to do at an annual meeting shall, refer and submit to the membership of the State Bar, defined questions affecting the substance or administration of the law, or affecting the functions or policy of the State Bar.